IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.893 of 1992

Decided on : November 7, 2006

Tulsi Ram **…..Petitioner.**

VERSUS

State of H.P. and others **…..Respondents.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner : **Mr. Ajay Sharma, Advocate.**

For the Respondents : **Mr. Ashok Chaudhary, Additional Advocate General, for respondent No.1.**

Mr. Bhupender Gupta, Senior Advocate, with Mr. Janesh Gupta, counsel for respondents No.2 and 3.

Surjit Singh, Judge (Oral)

Writ Petitioner is aggrieved by the order of the Director (Consolidation), exercising the powers of the State, under Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, hereinafter after referred to as the Act, whereby a portion to the extent of 1 Kanal 1 Marla area of Khasra No.1238, which was allotted to him in the re-partition on conclusion of consolidation process, has been ordered to be allotted to respondents No. 2 and 3 and in lieu thereof he (the petitioner) has been allotted equal area of land out of Khasra No.1220.

2. It appears that when in the course of consolidation process, on completion of the consolidation scheme, re-partition was

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Whether the reporters of the local papers may be allowed to see the Judgment?

being done, respondent No.2 Chint Ram appeared before the Consolidation Officer in the gathering of villagers and laid claim to Khasra No.1253 (old), the new number for which after the consolidation is 1238, alleging that it was close to his major portion. His claim was rejected by the Consolidation Officer on 25.8.1984, summarily. Appeal was filed against that order of the Consolidation Officer before the Settlement Officer, who dismissed the same on 24.5.1985 vide order Annexure P-1. More than five years after the dismissal of the aforesaid appeal, i.e. on 2.7.1990, respondents No.2 and 3, namely Chint Ram and Parwati Devi, filed a Revision Petition, under Section 54 of the Act, challenging the order dated 25.8.1984 of the Consolidation Officer. Accepting the aforesaid Revision Petition, the Additional Director (Consolidation of Holdings), exercising the delegated powers of the State Government, under Section 54 of the Act, has ordered that a portion of Khasra No.1253 (old) (new Khasra No.1238), to the extent of 1 kanal 1 marla, be allotted to respondents No.2 and 3 and in lieu of that area equivalent area, out of Khasra No.1220 (new) be allotted to the Writ Petitioner.

3. Grievance of the writ petitioner is that the aforesaid order could not have been passed when the revisional jurisdiction had been invoked more than five years after the passing of the order that was sought to be got revised. It is also the contention of the writ petitioner that land bearing Khasra No.1238 (new), which has been ordered to be given to respondents No.2 and 3, being close to land bearing Khasra Nos.1331 and 1332, which have been allotted to him, should have been allowed to remain with him.

4. I have heard the learned counsel for the parties and gone through the record.

5. As regards the plea that the writ petitioner had better claim to land bearing Khasra No.1238, on account of its proximity to Khasra Nos.1331 and 1332 allotted to him, the *Misl Hakiat* Annexure P-4, pertaining to these two khasra numbers, shows that the total area of these two numbers is just 5 marlas. On the strength of the proximity of Khasra No.1238, measuring 1 kanal 5 marlas, to these two numbers, the writ petitioner cannot lay claim on this number, because the area of two numbers allotted to him, i.e. 1331 and 1332, is just five marlas, while the area of Khasra No.1238 is 1 kanal 5 marlas. Admittedly, area of Khasra No.1238, which had old Khasra number 1253, was in the ownership and possession of respondents No.2 and 3 prior to consolidation and after consolidation it is close to the major portion of the land allotted to them in re-partition. Therefore, they have better claim over this land. In any case, the order of the Consolidation Officer shows that 4 marlas area of Khasra No. 1253 (old) still remains with the writ petitioner.

6. For the foregoing reasons, writ petitioner's contention that he has better right to the allotment of Khasra No.1238 is rejected.

7. Turning to the main contention that the revisional jurisdiction has been exercised after a lapse of more than five years, it may be stated that the writ petitioner does not appear to have raised the question before the Additional Director (Consolidation), who passed the impugned order. No limitation has been prescribed for exercise of revisional jurisdiction in the Act. Rule 28 of the Rules

framed in exercise of the power, under sub-Section (3) of Section 59, prescribing limitation for invoking the revisional jurisdiction, under Section 54 of the Act, has been held to be *ultra vires* and unconstitutional, in ***Amar Nath and another Versus State of H.P. and others, 2002 (1) Shim. L.C. 236***. In the same judgment, it has been held that though no period of limitation is there for exercise of revisional jurisdiction, under Section 54 of the Act, yet it should be exercised within reasonable time. It has further been held that the concept of reasonable time is flexible, elastic and cannot be placed in straight-jacket formula and length of reasonable time shall be decided in the light of the facts and the circumstances of each individual case.

8. Writ Petitioner has not stated that any prejudice has been caused to him, on account of exercise of revisional power, under Section 54 of the Act, after long lapse of five years. It is not his case that he has made any improvements on the land or had spent any amount of money, leave alone substantial amount of money or done anything else, to add to its value and utility. If that is so, the revisional power cannot be said to have not been exercised within reasonable time.

9. In view of the abovestated position, writ petition is dismissed.

November 7, 2006(sd) **(Surjit Singh), J.**